



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

Docket Number USCG-2015-1029

RIN 1625-AA00

Safety Zones; Coast Guard Sector Ohio Valley Annual and Recurring Safety Zones Update

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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**SUMMARY:** The Coast Guard is amending and updating its safety zones relating to recurring fireworks shows and other events that take place in the Coast Guard Sector Ohio Valley area of responsibility (AOR). This rule informs the public of regularly scheduled events that require additional safety measures through the establishing of a safety zone. Through this rulemaking the current list of recurring safety zones is updated with revisions, additional events, and removal of events that no longer take place in Sector Ohio Valley's AOR. When these safety zones are enforced, certain restrictions are placed on marine traffic in specified areas.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2015-1029 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail Petty Officer James Robinson, Sector Ohio Valley, U.S. Coast Guard; telephone (502) 779-5347, e-mail James.C.Robinson@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Captain of the Port (COTP) Ohio Valley is establishing, amending, and updating its current list of recurring safety zones codified in Table 1 of 33 CFR 165.801, for the COTP Ohio Valley zone.

On March 7, 2016, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled, “Sector Ohio Valley Annual and Recurring Safety Zones Update” (81 FR 11706). The public comment period ended on June 6, 2016. Before the comment period closed, the Coast Guard received information regarding two of the events. For the event listed in Table 1, Line 21, the event sponsor provided a new location and for the event listed in Table 1, Line 56, the event sponsor requested that for 2016 the event be held on July 1 instead of July 4. See Section IV. for more information on these two events.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Though we are not providing a full 30 day notice period, the Coast Guard is now providing less than 30days notice before the first recurring event enforcement is required on July 2. It is

impracticable to provide a full 30-days notice because this rule must be effective July 2, 2016.**III.**

### **Legal Authority and Need for Rule**

The Coast Guard's authority for establishing a safety zone is contained at 33 U.S.C. 1231. The Coast Guard is amending and updating the safety zones under 33 CFR part 165 to include the most up to date list of recurring safety zones for events held on or around navigable waters within the Sector Ohio Valley AOR. These events include fireworks displays, air shows, and others. The current list in Table 1 of 33 CFR 165.801 requires amending to provide new information on existing safety zones, include new safety zones expected to recur annually or biannually, and to remove safety zones that are no longer required. Issuing individual regulations for each new safety zone, amendment, or removal of an existing safety zone creates unnecessary administrative costs and burdens. This rulemaking reduces administrative overhead and provides the public with notice through publication in the **Federal Register** of the upcoming recurring safety zones.

### **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received information correcting the location for one recurring event and a date change for another from the event sponsors during the NPRM comment period. Therefore for 2016, we will be issuing a temporary final rule under Docket number 2016-0502 to establish a safety zone for the Riverfront Independence Festival Fireworks event, listed in Table 1, Line 21. The temporary final rule will be issued because for 2016, the event sponsor requested to change the location of the event from Ohio River, Mile 602.0-603.5 (Indiana) to Ohio River, Mile 607.5-608.6 (Indiana). If the event sponsor decides to continue to hold the event annually at the new location, the Coast Guard will publish an NPRM in the **Federal Register** to permanently change the event location.

In addition for 2016, we will be issuing a temporary final rule under Docket number 2016-

0279 to establish a safety zone for the Kindred Communications/Dawg Dazzle event, listed in Table 1, Line 56. The temporary final rule will reflect that for 2016 the event will be held on July 1 instead of July 4, which is the date listed in this final rule. If the event sponsor decides to continue to hold the event annually on July 1, the Coast Guard will publish an NPRM in the **Federal Register** to permanently change the event date.

All other proposed amendments will be adopted without change from the NPRM.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

The Coast Guard expects the economic impact of this rule to be minimal, and therefore a full regulatory evaluation is unnecessary. This rule establishes safety zones limiting access to certain areas under 33 CFR 165 within Sector Ohio Valley’s AOR. The effect of this rulemaking will not be significant because these safety zones are limited in scope and duration. Additionally, the public is given advance notification through local forms of notice, the **Federal Register**, and/or Notices of Enforcement and thus will be able to plan around the safety zones in advance.

Deviation from the safety zones established through this proposed rulemaking may be requested from the appropriate COTP and requests will be considered on a case-by-case basis. Broadcast Notices to Mariners and Local Notices to Mariners will also inform the community of these safety zones so that they may plan accordingly for these short restrictions on transit. Vessel traffic may request permission from the COTP Ohio Valley or a designated representative to enter the restricted areas.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 0 comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the safety zone areas during periods of enforcement. The safety zones will not have a significant economic impact on a substantial number of small entities because they are limited in scope and will be in effect for short periods of time. Before the enforcement period, the Coast Guard COTP will issue maritime advisories widely available to waterway users. Deviation from the safety zones established through this rulemaking may be requested from the appropriate COTP and requests will be considered on a case-by-case basis.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175,

Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule is categorically excluded under section 2.B.2, figure 2-1, paragraph (34)(g) of the Instruction because it involves establishment of safety zones.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked

to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Amend §165.801 by revising table 1 to read as follows:

§165.801 Annual Fireworks displays and other events in Sector Ohio Valley’s AOR.

\* \* \* \* \*

<b>Date</b>	<b>Sponsor/name</b>	<b>Location</b>	<b>Safety zone</b>
1. Multiple days - April through November	Pittsburgh Pirates/Pittsburgh Pirates Fireworks	Pittsburgh, PA	Allegheny River, Mile 0.2 - 0.8 (Pennsylvania).
2. Multiple days - April through November	Cincinnati Reds/Cincinnati Reds Season Fireworks	Cincinnati, OH	Ohio River, Mile 470.1 - 470.4; extending 500 ft. from the State of Ohio shoreline (Ohio).
3. 2 days - Third Friday and Saturday in April	Thunder Over Louisville/Thunder Over Louisville	Louisville, KY	Ohio River, Mile 602.0 - 606.0 (Kentucky).
4. Last Sunday in May	Friends of Ironton	Ironton, OH	Ohio River, Mile 326.7 - 327.7 (Ohio)
5. 3 days - Third weekend in April	Henderson Tri-Fest/Henderson Breakfast Lions Club	Henderson, KY	Ohio River, Mile 803.5 - 804.5 (Kentucky).



6. 1 day - A Saturday in July	Paducah Parks and Recreation Department/Cross River Swim	Paducah, KY	Ohio River, Mile 934.0 - 936.0 (Kentucky).
7. 1 day - First weekend in June	Bellaire All-American Days	Bellaire, OH	Ohio River, Mile 93.5 - 94.5 (Ohio).
8. 2 days - Second weekend of June	Rice's Landing Riverfest	Rices Landing, PA	Monongahela River, Mile 68.0 - 68.8 (Pennsylvania).
9. 1 day - First Sunday in June	West Virginia Symphony Orchestra/Symphony Sunday	Charleston, WV	Kanawha River, Mile 59.5 - 60.5 (West Virginia).
10. 1 day - Saturday before 4th of July	Riverfest Inc./Saint Albans Riverfest	St. Albans, WV	Kanawha River, Mile 46.3 - 47.3 (West Virginia).
11. 1 day - 4 <sup>th</sup> July	Greenup City	Greenup, KY	Ohio River, Mile 335.2 - 336.2 (Kentucky)
12. 1 day - 4 <sup>th</sup> July	Middleport Community Association	Middleport, OH	Ohio River, Mile 251.5 - 252.5 (Ohio)
13. 1 day - 4 <sup>th</sup> July	People for the Point Party in the Park	South Point, OH	Ohio River, Mile 317 - 318 (Ohio)
14. 1 day - Last weekend in June or first weekend in July	Riverview Park Independence Festival	Louisville, KY	Ohio River, Mile 618.5 - 619.5 (Kentucky)
15. 1 day - Third or fourth week in July	Upper Ohio Valley Italian Heritage Festival/Upper Ohio Valley Italian Heritage Festival Fireworks	Wheeling, WV	Ohio River, Mile 90.0 - 90.5 (West Virginia).
16. 1 day - 4 <sup>th</sup> or 5 <sup>th</sup> of July	City of Cape Girardeau July 4th Fireworks Show on the River	Cape Girardeau, MO	Upper Mississippi River, Mile 50.0 - 52.0
17. 1 day - Third or fourth of July	Harrah's Casino/Metropolis Fireworks	Metropolis, IL	Ohio River, Mile 942.0 - 945.0 (Illinois).
18. 1 day - During the first week of July	Louisville Bats Baseball Club/Louisville Bats Firework Show	Louisville, KY	Ohio River, Mile 603.0 - 604.0 (Kentucky).
19. 1 day - July 4th	Waterfront Independence Festival/Louisville Orchestra Waterfront 4 <sup>th</sup>	Louisville, KY	Ohio River, Mile 603.0 - 604.0 (Kentucky).

20. 1 day - During the first week of July	Celebration of the American Spirit Fireworks/All American 4 <sup>th</sup> of July	Owensboro, KY	Ohio River, Mile 755.0 - 759.0 (Kentucky).
21. 1 day - During the first week of July	Riverfront Independence Festival Fireworks	New Albany, IN	Ohio River, Mile 602.0-603.5 (Indiana).
22. 1 day - July 4th	Shoals Radio Group/Spirit of Freedom Fireworks	Florence, AL	Tennessee River, Mile 255.0 - 257.0 (Alabama).
23. 1 day - Saturday before July 4th	Town of Cumberland City/Lighting up the Cumberlands Fireworks	Cumberland City, TN	Cumberland River, Mile 103.0 - 105.0 (Tennessee).
24. 1 day - July 4th	Knoxville office of Special Events/Knoxville July 4th Fireworks	Knoxville, TN	Tennessee River, Mile 647.0 - 648.0 (Tennessee).
25. 1 day - July 4th	NCVC/Music City July 4th	Nashville, TN	Cumberland River, Mile 190.0 - 192.0 (Tennessee).
26. 1 day - Saturday before July 4th, or Saturday after July 4th	Grand Harbor Marina/Grand Harbor Marina July 4th Celebration	Counce, TN	Tennessee-Tombigbee Waterway, Mile 450.0 - 450.5 (Tennessee).
27. 1 day - Second Saturday in July	City of Bellevue, KY/Bellevue Beach Park Concert Fireworks	Bellevue, KY	Ohio River, Mile 468.2 - 469.2 (Kentucky and Ohio).
28. 1 day - Sunday before Labor Day	Cincinnati Bell, WEBN, and Proctor and Gamble/Riverfest	Cincinnati, OH	Ohio River, Mile 469.2 - 470.5 (Kentucky and Ohio).
29. 1 day - July 4th	Summer Motions Inc./Summer Motion	Ashland, KY	Ohio River, Mile 322.1 - 323.1 (Kentucky).
30. 1 day - Last weekend in June or First weekend in July	City of Point Pleasant/Point Pleasant Sternwheel Fireworks	Point Pleasant, WV	Ohio River, Mile 265.2 - 266.2 (West Virginia).
31. 1 day - July 3rd or 4th	City of Charleston/City of Charleston Independence Day Celebration	Charleston, WV	Kanawha River, Mile 58.1 - 59.1 (West Virginia).
32. 1 day - July 4th	Civic Forum/Civic Forum 4th of July Celebration	Portsmouth, OH	Ohio River, Mile 355.5 - 356.5 (Ohio).
33. 1 day - Second Saturday in August	Guyasuta Days Festival/Borough of Sharpsburg	Pittsburgh, PA	Allegheny River, Mile 005.5 - 006.0 (Pennsylvania).

34. 1 day - Third week in October	Pittsburgh Foundation/Bob O'Connor Cookie Cruise	Pittsburgh, PA	Ohio River, Mile 0.0 - 0.5 (Pennsylvania).
35. 1 day - Second full week of August	PA FOB Fireworks Display	Pittsburgh, PA	Allegheny River, Mile 0.8 - 1.0 (Pennsylvania).
36. 1 day - Third week of August	Beaver River Regatta Fireworks	Beaver, PA	Ohio River, Mile 25.2 - 25.8 (Pennsylvania).
37. 1 day - December 31	Pittsburgh Cultural Trust/Highmark First Night Pittsburgh	Pittsburgh, PA	Allegheny River Mile, 0.5 - 1.0 (Pennsylvania).
38. 1 day - Friday before Thanksgiving	Pittsburgh Downtown Partnership/Light Up Night	Pittsburgh, PA	Allegheny River, Mile 0.0 - 1.0 (Pennsylvania).
39. Multiple days - April through November	Pittsburgh Riverhounds/Riverhounds Fireworks	Pittsburgh, PA	Monongahela River, Mile 0.22 - 0.77. (Pennsylvania)
40. 3 days - Second or third weekend in June	Hadi Shrine/Evansville Freedom Festival Air Show	Evansville, IN	Ohio River, Miles 791.0 - 795.0 (Indiana).
41. 1 day - Second or third Saturday in June, the last day of the Riverbend Festival	Friends of the Festival, Inc./Riverbend Festival Fireworks	Chattanooga, TN	Tennessee River, Mile 463.5 - 464.5 (Tennessee).
42. 2 days - Second Friday and Saturday in June	City of Newport, KY/Italianfest	Newport, KY	Ohio River, Miles 469.6 - 470.0 (Kentucky and Ohio).
43. 1 day - Last Saturday in June	City of Aurora/Aurora Firecracker Festival	Aurora, IN	Ohio River Mile, 496.7; 1400 ft. radius from the Consolidated Grain Dock located along the State of Indiana shoreline at (Indiana and Kentucky).
44. 1 day - second weekend in June	City of St. Albans/St. Albans Town Fair	St. Albans, WV	Kanawha River, Mile 46.3 - 47.3 (West Virginia).
45. 1 day - Saturday before July 4th	PUSH Beaver County/Beaver County Boom	Beaver, PA	Ohio River, Mile 24.0 -25.6 (Pennsylvania).

46. 1 day - 4th of July (Rain date - July 5th)	Monongahela Area Chamber of Commerce/Monongahela 4th of July Celebration	Monongahela, PA	Monongahela River, Mile 032.0 - 033.0 (Pennsylvania).
47. 1 day - Saturday Third or Fourth full week of July (Rain date—following Sunday)	Oakmont Yacht Club/Oakmont Yacht Club Fireworks	Oakmont, PA	Allegheny River, Mile 12.0 - 12.5 (Pennsylvania).
48. 1 day - Week of July 4th	Three Rivers Regatta Fireworks/EQT 4 <sup>th</sup> of July Celebration	Pittsburgh, PA	Ohio River, Mile 0.0 - 0.5, Allegheny River, Mile 0.0 - 0.5, and Monongahela River, Mile 0.0 - 0.5 (Pennsylvania).
49. 1 day - 3rd or 4th of July	City of Paducah, KY	Paducah, KY	Ohio River, Mile 934.0 - 936.0; Tennessee River, mile 0.0 - 1.0 (Kentucky)
50. 1 day - 3rd or 4th of July	City of Hickman, KY	Hickman, KY	Lower Mississippi River, Mile 921.0 - 923.0 (Kentucky).
51. 1 day - During the first week of July	Evansville Freedom Celebration	Evansville, IN	Ohio River, Miles 791.0 - 795.0 (Indiana).
52. 3 days - One of the first two weekends in July	Madison Regatta, Inc./Madison Regatta	Madison, IN	Ohio River, Miles 555.0 - 560.0 (Indiana).
53. 1 day - July 4th	Cities of Cincinnati, OH and Newport, KY/July 4th Fireworks	Newport, KY	Ohio River, Miles 469.6 - 470.2 (Kentucky and Ohio).
54. 2 days - second weekend in July	Marietta Riverfront Roar/Marietta Riverfront Roar	Marietta, OH	Ohio River, Mile 171.6 - 172.6 (Ohio).
55. 1 day - 1st weekend in July	Gallia County Chamber of Commerce/Gallipolis River Recreation Festival	Gallipolis, OH	Ohio River, Mile 269.5 - 270.5 (Ohio).
56. 1 day - July 4th	Kindred Communications/Dawg Dazzle	Huntington, WV	Ohio River, Mile 307.8 - 308.8 (West Virginia).
57. 1 day - Last weekend in August	Swiss Wine Festival/Swiss Wine Festival Fireworks Show	Ghent, KY	Ohio River, Mile 537 (Kentucky).
58. 1 day - Saturday of Labor Day	University of Pittsburgh Athletic Department/University of	Pittsburgh, PA	Allegheny River, Mile 0.0 - 0.25 (Pennsylvania).

weekend	Pittsburgh Fireworks		
59. Sunday, Monday, or Thursday from September through January	Pittsburgh Steelers Fireworks	Pittsburgh, PA	Ohio River, Mile 0.3 - Allegheny River, Mile 0.2 (Pennsylvania).
60. 3 days - Third weekend in September	Wheeling Heritage Port Sternwheel Festival Foundation/Wheeling Heritage Port Sternwheel Festival	Wheeling, WV	Ohio River, Mile 90.2 -90.7 (West Virginia).
61. 1 day - Second Saturday in September	Ohio River Sternwheel Festival Committee fireworks	Marietta, OH	Ohio River, Mile 171.5 - 172.5 (Ohio)
62. 1 day - Second weekend of October	Leukemia and Lymphoma Society/Light the Night Walk Fireworks	Nashville, TN	Cumberland River, Mile 190.0 - 192.0 (Tennessee)
63. 1 day - First Saturday in October	West Virginia Motor Car Festival	Charleston, WV	Kanawha River, Mile 58 - 59 ( West Virginia)
64. 1 day - Friday before Thanksgiving	Kittanning Light Up Night Firework Display	Kittanning, PA	Allegheny River, Mile 44.5 - 45.5 (Pennsylvania)
65. 1 day - First week in October	Leukemia & Lymphoma Society/Light the Night	Pittsburgh, PA	Ohio River, Mile 0.0 - 0.4 (Pennsylvania).
66. 1 day - Friday before Thanksgiving	Duquesne Light/Santa Spectacular	Pittsburgh, PA	Monongahela River, Mile 0.00 - 0.22, Allegheny River, Mile 0.00 - 0.25, and Ohio River, Mile 0.0 -0.3 (Pennsylvania).

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Dated: June 9, 2016

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R. V. TIMME

Captain, U. S. Coast Guard

Captain of the Port Ohio Valley

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